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Supreme Court of the United States

OCTOBER TERM, 1930.

No. 606.

UNITED STATES OF AMERICA,
Appellant,

against

WILLIAM H. SPRAGUE and WILLIAM J. HOWEY,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

NOTICE OF MOTION AND PETITION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE.

ARTHUR B. SPINGARN,
JAMES MARSHALL,
Petitioners.

The Hecla Press, 225 Varick St., N. Y. Tel. WAlker 5-1480.

Supreme Court of the United States

OCTOBER TERM, 1930.

UNITED STATES OF AMERICA, Appellant, against WILLIAM H. SPRAGUE and WILLIAM J. HOWEY, Appellees.	No. 606. Appeal from the District Court of the United States for the District of New Jersey.

Sirs:

PLEASE TAKE NOTICE that upon the argument of the above-entitled cause the undersigned will present to this Court at the Capitol, Washington, D. C., the annexed petition for leave to file a brief herein as *amici curiae*.

Dated, New York, January 8, 1931.

Yours,

ARTHUR B. SPINGARN,
JAMES MARSHALL.

To:

HON. THOMAS D. THACHER,
Solicitor General of the United States.

FREDERIC M. P. PEARSE, Esq.,
Attorney for Appellees,
786 Broad Street, Newark, N. J.

Supreme Court of the United States

OCTOBER TERM, 1930.

UNITED STATES OF AMERICA, Appellant, against WILLIAM H. SPRAGUE and WILLIAM J. HOWEY, Appellees.	No. 606. Appeal from the District Court of the United States for the District of New Jersey.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioners, Arthur B. Spingarn and James Marshall, pray that they may be permitted to file a brief in the above-entitled cause as *amici curiae*. They are the counsel for National Association for the Advancement of Colored People, a corporation organized under the Membership Corporation Law of the State of New York. Among the objects of the Association are the following:

> "to advance the interests of colored citizens; to secure for them impartial suffrage; and to increase their opportunities for securing justice in the courts, education for their children, employment according to their ability, and complete equality before the law."

The United States District Court for the District of New Jersey has quashed the indictment herein on the ground that the Eighteenth Amendment to the Constitution of the United States was not validly adopted. The Court argued that the submission by Congress of the Eighteenth Amendment to the Legislatures of the several States for ratification constituted "an abuse of discretion

on the part of Congress in its capacity as an administrative agent." It was held that Congress should have submitted the proposed amendment to conventions to be held in the several States for the purpose of passing upon the amendment, because the amendment transferred powers from the States to the United States; that in such a contingency Article V of the Constitution looked to the ratification by State conventions as the sole means of ratification, and that the Tenth Amendment to the Constitution, which declared the people to be the reservoir of all powers not expressly delegated to the United States, made it requisite that a constitutional amendment intending to deprive the States or the people of the States of their inherent powers must be approved by the people themselves and not by their Legislatures.

The Negro citizens of this country have an important stake in this decision. If it is true that the Eighteenth Amendment was not constitutionally adopted because the surrender of State powers to the Federal Government could only be accomplished by action of State conventions, then it might similarly be argued that the Thirteenth, Fourteenth and Fifteenth Amendments were unconstitutionally adopted. These three amendments likewise involved the surrender of State powers to the Federal Government.

The Thirteenth Amendment, abolishing slavery, the Fourteenth Amendment, requiring due process of law on the part of the States and imposing a penalty upon such States as failed to recognize the rights of the newly emancipated Negroes, and the Fifteenth Amendment, which guaranteed the right to vote, were all adopted in the same manner as the Eighteenth Amendment.

The Solicitor General has consented to our filing a brief as *amici curiae* herein. The appellees have withheld their consent.

Because of the importance of this question to the colored citizens of this country, because of their interest

in this decision, which transcends the question of the traffic in liquor and relates to those fundamental rights which they attained only as the result of four years of bitter warfare, we deem it desirable to file a short brief which will reflect their views on these subjects, and we therefore respectfully pray for leave to file a brief herein as *amici curiæ*, a copy of which we submit herewith.

And your petitioners will ever pray.

ARTHUR B. SPINGARN,
JAMES MARSHALL,
Petitioners.

Dated, New York, January 5, 1931.